

Policy for the Use of Computer and Electronic Communications

I. PURPOSE

The intent of this policy is to assist in the understanding of the use of email, the internet, computer files, software and any other form of technology provided by OC LAFCO. This policy is also intended to assist in the understanding of the use of OC LAFCO employees' and Commissioners' personal accounts and devices for OC LAFCO business.

II. DEFINITIONS

As used in this Policy, the following terms are defined as follows:

1. "Public Record" includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by OC LAFCO regardless of physical form of characteristics.
2. "Writing" means handwriting, typewriting, printing, photo stating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, regardless of the manner in which the record has been stored.
3. "Electronic Communication" includes any and all electronic transmission, and every other means of recording upon any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Without limiting the nature of the foregoing, "electronic communications" include emails, texts, voicemails, and also include communications on or within commercial applications (apps) such as Facebook Messenger, Twitter, etc.

III. POLICY

A. Employee Use of OC LAFCO Equipment and Accounts

1. Computers, computer files, the email system, and software furnished to

employees are OC LAFCO property intended for business use. Employees can have no expectation of privacy in any documents or materials in these systems. OC LAFCO reserves the right to access all systems and to monitor the use of these systems at any time, with or without notice.

2. Every OC LAFCO employee shall be assigned an OC LAFCO email account. However, employees should not use a password, access a file, or retrieve any stored communication without authorization.
 3. OC LAFCO strives to maintain a workplace free of harassment and sensitive to the diversity of its employees. Therefore, OC LAFCO prohibits the use of computers, the email system or any other form of technology in ways that are disruptive, offensive to others, or harmful to morale. For example, the display or transmission of sexually explicit images, messages, and cartoons is not allowed. Other such misuse includes but is not limited to, ethnic slurs, racial comments, off-color jokes, or anything that may be construed as harassment or showing disrespect for others.
 4. Email may not be used to solicit others from commercial ventures, religious or political causes, outside organizations, or other non-business matters. Internet access is for business and related professional use.
 5. OC LAFCO purchases and licenses the use of various computer software for business purposes and does not own the copyright to this software or its related documentation. Unless authorized by the software developer, OC LAFCO does not have the right to reproduce such software for use on more than one computer.
 6. Employees may only use software on local area networks or on multiple machines according to the software license agreement. OC LAFCO prohibits the illegal duplication of software and its related documentation.
 7. OC LAFCO-owned computers, with the exception of laptops designated for remote use, shall not be removed from the premises.
- B. Public Records Act and Electronic Communications on OC LAFCO and Personal Accounts
1. According to the definition of “public records” the “writing” email messages and any attachments on OC LAFCO’s server, regardless of format may, in fact, be public records and may be subject to the provisions of the Public Records Act as well as legal requirements for retention of public records. Additionally, pursuant to the *San Jose v. Superior Court case* ((2017) 2 Cal. 5th 608), the definition of “public records” and “writing” may also include any messages sent through a personal electronic device or personal account (such as a Gmail account or a message sent through a commercial application, such as Facebook Messenger) to or from any OC LAFCO employee that pertain to

OC LAFCO business. Electronic messages sent through an OC LAFCO or personal account, or device shall hereinafter collectively be called “electronic communications.”

2. Employees shall only use OC LAFCO accounts to conduct OC LAFCO business. OCLAFCO employees shall not use personal accounts for the creation, transmission, or storage of electronic communications regarding OC LAFCO business. If an OC LAFCO employee receives an electronic communication regarding OC LAFCO business on his/her non-LAFCO account, or circumstances require such person to conduct OC LAFCO business on a non-OC LAFCO account, the OC LAFCO employee shall either: (a) copy (“cc”) any communication from an OC LAFCO employee’s personal account to his/her OC LAFCO account; or (b) forward the associated electronic communication to his/her OC LAFCO account no later than 10 days after the original creation or transmission of the electronic communication. OC LAFCO employees shall endeavor to ask persons sending electronic communications regarding OC LAFCO business to a personal account to instead utilize the OC LAFCO employee’s account, and likewise shall endeavor to ask a person sending an electronic communication regarding non-OC LAFCO business to use the OC LAFCO employee’s personal or non-OC LAFCO account.
3. OC LAFCO Commissioners may conduct OC LAFCO business on non-OC LAFCO accounts and devices but should be aware that if OC LAFCO receives an applicable PRA request, OC LAFCO may request that Commissioners or their respective public agencies (if any) search their non-OC LAFCO accounts for electronic communications that respond to the PRA request.
4. In the event a Public Records Act request is received by OC LAFCO seeking electronic communications of OC LAFCO employees or Commissioners, the Commission Clerk shall promptly transmit the request to the applicable OC LAFCO employee(s) and/or Commissioners whose electronic communications are sought. The Commission Clerk shall communicate the scope of the information requested to the applicable OC LAFCO employee(s) or Commissioner(s) and an estimate of the time within which the Commission Clerk intends to provide any responsive electronic communications to the requesting party. It shall be the duty of each OC LAFCO employee and/or Commissioner receiving such a request from the Commission Clerk to promptly conduct a good faith and diligent search of his/her OC LAFCO and/or personal electronic accounts and devices for responsive electronic communications.
5. Generally, an electronic communication (and attachment) may be considered an OC LAFCO record if it (a) is created or received in connection with official OC LAFCO business; (b) documents the formulation and implementation of LAFCO policies and procedures; or (c) initiates, authorizes or completes a transaction of official OC LAFCO business. Resolution of the question of whether electronic communication is an OC LAFCO record will involve an

examination of several factors, including (i) the content itself; (ii) the context in, or purpose for which, it was written; (iii) the audience to whom it was directed; (iv) the purpose of the communication; and (v) whether the writing was prepared by an OC LAFCO employee or Commissioner acting or purporting to act within the scope of his or her employment or appointment.

6. Preliminary drafts, notes or interagency or intra-agency memoranda which are not retained by OC LAFCO in the ordinary course of business are generally not considered to be OC LAFCO records subject to disclosure. OC LAFCO employees are encouraged to delete from OC LAFCO accounts and devices documents that are not otherwise required to be kept by law or whose preservation is not necessary or convenient to the discharge of the employee's duties or the conduct of OC LAFCO business. Examples of email messages that are generally not considered OC LAFCO records may include (a) personal messages and announcements not related to official OC LAFCO business; (b) messages with attached copies or extracts of documents distributed for convenience or reference (with the original documents being preserved according to the Records Retention and Destruction Policy); and (c) messages that are essentially cover notes or distribution slips. OC LAFCO's legal counsel can assist an OC LAFCO employee or Commissioner in determining whether an electronic communication message is required to be retained and/or necessary or convenient to the discharge of the employee or Commissioner's duties or the conduct of OC LAFCO business.
7. The following provisions shall not apply to electronic communication generated or retained by Commissioners on another public agency's email account.

OC LAFCO employees and Commissioners should, within 60 days following the adoption of this Policy:

- a. Establish a separate private account for receipt and two-year retention of communications relating to OC LAFCO business, except communications to or from an oclafco.org account; or
- b. Search all private non-OC LAFCO private accounts and delete any electronic communication regarding OC LAFCO business that:
 - 1) Is to or from an oclafco.org account (and thus likely to be duplicated and retained on that OC LAFCO account), or
 - 2) Is more than two years old; and
 - 3) Forward to the Commission Clerk for retention any electronic communication on private accounts regarding OC LAFCO business that is less than two years old; and

- 4) Delete communications that have been forwarded to the Clerk.
- c. On an ongoing basis, OC LAFCO employees and Commissioners who receive electronic communications regarding LAFCO business on a non-OC LAFCO private account should:
 - 1) Retain such correspondence in a separate dedicated private OC LAFCO account; or
 - 2) Forward the communication to the Commission Clerk for retention unless it was to or from an oclafco.org account (and thus likely to be duplicated and retained). After forwarding the communication, OC LAFCO employees and Commissioners may delete the original record from their private non-OC LAFCO account.
8. If an OC LAFCO employee or Commissioner identifies or locates records that are responsive to a Public Records Act request, subpoena, or other court order, the employee and/or Commissioner shall promptly transmit any responsive electronic communications to the Commission Clerk. Such transmission shall be provided in sufficient time to enable the Commission Clerk to adequately review and provide the disclosable electronic communications to the requesting party. In the event an OC LAFCO employee and/or Commissioner does not possess, or cannot with reasonable diligence recover, responsive electronic communications from the OC LAFCO employee's or Commissioner's electronic account, the OC LAFCO employee and/or Commissioner shall so notify the Commission Clerk, by way of a written statement.
9. It shall be the duty of the Commission Clerk, in consultation with OC LAFCO's legal counsel, to determine whether a particular electronic communication, or any portion of that electronic communication, is exempt from disclosure. To that end, the responding OC LAFCO employee and/or Commissioner shall provide the Commission Clerk with all responsive electronic communications, and, if in doubt, shall err on the side of caution and should "overproduce." If an electronic communication involves both public business and personal communication, the responding OC LAFCO employee and/or Commissioner may redact the personal communication portion of the electronic communication prior to transmitting the electronic communication to the Commission Clerk. In the event, a question arises as to whether or not a particular communication, or any portion of it, is a public record or purely a personal communication, the OC LAFCO employee and/or Commissioner should consult with the Commission Clerk or OC LAFCO's legal counsel.

C. Retention of Electronic Communications

1. OC LAFCO's email system is intended to be used as a medium of

communication only. Therefore, the email system should not be used to store or maintain documents, including, but not limited to, OC LAFCO records. Any electronic communication, including any attachments, regardless of format, which can be considered an OC LAFCO record, must be preserved in accordance with the retention periods specified in the Records Retention and Destruction Policy.

2. It is the responsibility of individual employees to determine if electronic communication is an OC LAFCO record that must be retained in accordance with the Records Retention and Destruction Policy. Generally, the OC LAFCO employee who sends an electronic communication that qualifies as an OC LAFCO record should be the person responsible for preserving the electronic communication, but persons responsible for a particular program or project file shall be responsible for preserving all electronic communication they send or receive related to that program or project.
3. OC LAFCO employees may print and file hard copies of electronic communication that must be preserved. Employees may also save electronic communication electronically, in electronic folders separate from their regular email inboxes. However, electronic communication must not be stored in an employee's regular inbox, since OC LAFCO's automatic maintenance system may periodically delete emails from all inboxes. Many types of electronic communication can be stored electronically as a Word document.
4. OC LAFCO's employees can receive assistance with setting up electronic folders or other methods of electronically archiving electronic communication. However, all electronic communications that are retained electronically must be easy to retrieve, view and print out, if necessary.
5. For projects that involve two or more employees, any electronic communications pertaining to a specific project should be retained in that project's central file(s). Employees should work with the Commission Clerk or the Executive Officer on the best method for central storage of electronic communications on the project to make sure the electronic communications remain easily accessible to everyone.
6. An electronic communication that relates to a claim or a potential claim against OC LAFCO must be preserved. In the event a records request or court-issued demand is made for email, the employees having control over such electronic communication, once they become aware of the request or demand, shall use their best efforts, by any responsible means available, to temporarily preserve any electronic communication that is in existence until it is determined whether such electronic communication is subject or preservation, public inspection or disclosure. Likewise, any electronic communication that may relate to a lawsuit filed against OC LAFCO, even if a subpoena or court order for such electronic communication has not yet been issued, must be preserved. Under newly enacted federal rules regarding

electronic discovery, any information stored electronically, including electronic communication, must be produced for a requesting party. A court can impose severe penalties if electronic communication relevant to a lawsuit is deliberately destroyed when it is known, or should have reasonably been anticipated, that a claim or lawsuit could be filed against OC LAFCO. There are no penalties if electronic information is “lost” through “the routine operation of an electronic information system” (i.e., automatic deletion after a period of time; automatic overwriting of backup tapes, etc.). (Rule 37(f) of the Federal Rules of Civil Procedure). However, OC LAFCO has a duty to preserve any relevant data when there is even a hint of possible litigation. Therefore, when OC LAFCO employees become aware of a potential claim, an actual claim, or a lawsuit against OC LAFCO, they must preserve any electronic communication and attachments that have any information relevant to that matter. OC LAFCO’s legal counsel can provide you with guidance on these issues.

D. Enforcement of Policy

1. Employees and Commissioners should notify the Executive Officer upon learning of violations of this policy. Failure of an OC LAFCO employee or Commissioner to abide by this policy, following its adoption, may result in one or more of the following:
 - Disciplinary action, up to and including termination (for employees).
 - Removal from office (for Commissioners).
 - Censure (for Commissioners).
 - Revocation of election device privileges (including revocation of stipend or reimbursement).
 - Judicial enforcement against an OC LAFCO employee or Commissioner directly, by the requesting party.
2. This policy does not waive any exemption to disclosures that may apply under the California Public Records Act.

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